IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

(1) Hirni Dhani Gram Sewa Sahkari Samiti Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.1802/2005

(2) Hirni Dhani Gram Sewa Sahkari Samiti Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.428/2005

Date of Order : 10th May 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Sangeet Lodha with Mr.A.S.Rathore for the petitioner

Mr.M.R.Singhvi with Mr.Girish Joshi)
Mr.S.K.Vyas with Mr.H.R.Soni and)
Mr.B.L.Bhati) for the respondents

BY THE COURT:

These two writ petitions, CWP No.428/2005 and CWP No.1802/2005 filed by the same petitioner one after another, essentially relating to the same subject matter of dealing in public distribution system concerning essential commodities, have common and inter-related facts and issues; hence, were heard together and are taken up for disposal by this common order.

The petitioner, Hirani Dhani Gram Sewa Sahakari Samiti (hereinafter referred to as 'the petitioner'/'the petitioner Society') contends in these writ petitions that its right to deal in essential commodities is sought to be taken away by circuitous methods and the impugned governmental actions are intended only to extend undue advantage and benefit to the respondent-Nagaur Sahakari Upbhokta Wholesale Bhandar Limited (hereinafter referred to as 'the Bhandar').

In the past, there had been rounds of litigations concerning the legal rights and the area of operation of the petitioner Society that culminated in Division Bench judgment of this Court dated 09.10.2003 in favour of the petitioner. The facts leading to the said Division Bench decision forming prelude to the submissions of the petitioner in these writ petitions could be noticed thus: According to the petitioner, it was registered as a Co-operative Society under the provisions of the Rajasthan Co-operative Societies Act, 1965 ('the Act of 1965') that stands repealed by the Rajasthan Co-operative Societies Act, 2001 ('the Act of 2001'); and the societies registered under the Act of 1965 are deemed to be registered under the Act of 2001 by virtue of its Section 127 (3). The petitioner has averred that it was initially registered with its area of operation limited to Gram Panchayat, Kherwa (District Nagaur); that it was primarily transacting business of

agricultural credit and was also transacting non-credit business particularly that of distribution of essential commodities at fair price; that by resolution dated 30.10.1994 the petitioner society resolved to amend the bye-laws to extend its area of operation beyond Gram Panchayat, Kherwa and to the entire Nagaur District in respect of non-credit business; that proposal of the petitioner Society for amendment of its bye-laws was rejected by the Assistant Registrar, Co-operative Societies, Nagaur by his order dated 30.03.1995; that however, the said order dated 30.03.1995 was set aside in appeal by the Additional Registrar, Co-operative Societies, Jodhpur on 30.05.1996 and the Assistant Registrar was directed to decide the case afresh in accordance with law. The petitioner has pointed out that by the order dated 25.10.1996 the Assistant Registrar, Co-operative Societies approved the proposal made by the petitioner but with some modification; and the area of operation for non-credit business was permitted to be extended not to the entire Nagaur District but restricted to its Degana Tehsil; and the amended sub-clause (2) of clause (1) of the bye-laws of the petitioner Society reads as under:-

> "The area of operation of the Society will be limited upto Gram Panchayat, Kherwa, but for non-credit business, it will be Tehsil area Degana"

The Assistant Registrar, Co-operative Societies, Nagaur issued a notice under Section 14(1) of the Act of 1965 on 29.10.1996 inviting objections, if any, within a period of 15 days with regard to amendment brought about by the petitioner and ultimately by the order dated 22.11.1996, the Assistant Registrar registered the aforesaid amendment in the bye-laws of the petitioner Society. The petitioner contends that in view of the said amendment, it has acquired jurisdiction to carry on non-credit business in the area of Tehsil Degana within District Nagaur.

According to the petitioner, non-availability of wholesale outlet of Sahakari Upbhokta Wholesale Bhandar for Degana area was causing inconvenience in retail distribution of levy sugar and wheat. Therefore, keeping in view the convenience of general public and to ensure quick and quality distribution of essential commodities, on 18.07.1998 the Collector (Supplies), Nagaur recommended for assignment of wholesale business of levy sugar and wheat for Tehsil Degana to the petitioner Society in the interest of public; and consequent thereto, the Department of Food and Civil Supplies, by its communication dated 14.08.1998 allowed the work of distribution of levy sugar to the petitioner Society and necessary licence was issued in its favour; and the Deputy Commissioner, Department of Food and Civil Supplies by his

order dated 05.10.1998 allotted quota of sugar to Nagaur Sahakari Upbhokta Bhandar, Nagaur by reducing the same from 228 MT to 125 MT; and by the same order, 103 MT of sugar was allotted to the petitioner Society.

The petitioner has pointed out that validity of the order dated 31.10.1998 was assailed by the respondent Nagaur Sahakari Upbhokta Bhandar, Nagaur in Writ Petition No.3354/1998 that was dismissed by this Court on 16.11.1998 after hearing the parties; the Bhandar took the matter in intra-court appeal (SAW No.1115/1998) but then withdrew the appeal as well as the writ petition on 14.01.1999.

The petitioner has alleged that after withdrawal of the aforesaid special appeal, a device was planned to nullify the order of grant of wholesale business of levy sugar to the petitioner Society at the administration level by propagating that the petitioner has no right to do the non-credit business beyond Gram Panchayat, Kherwa. The petitioner has referred, inter alia, to the letter dated 16.01.1999 sent by the Assistant Registrar, Co-operative Societies, Nagaur to the District Supply Officer, Nagaur (DSO) suggesting that the area of operation of the petitioner was only within the jurisdiction of Gram Panchayat, Kherwa; letter dated 09.02.1999 sent by the Registrar, Co-operative Societies, Jaipur to the District Collector, Nagaur recommending re-transfer of the wholesale

business to the Bhandar, again stating that area of operation of the petitioner Society was only Gram Panchayat, Kherwa; further communication dated 07.05.1999 by the Joint Registrar (Consumer) to the Additional Commissioner, Department of Food and Civil Supplies that jurisdiction of the petitioner Society was restricted to Gram Panchayat, Kherwa and recommending that the Bhandar be appointed as wholesale dealer; and yet another communication dated 01.06.1999 of the Assistant Registrar, Nagaur stating to the Collector, Nagaur that area of operation of the petitioner was limited to Gram Panchayat, Kherwa. According to the petitioner, officers of the Department of Co-operative Societies succeeded in misleading the Collector (Supply), Nagaur who, by the order dated 23.10.2000, while allowing the petitioner Society to deal with levy sugar and wheat already allotted to it, directed that future wholesale business be again handed over to the respondent Bhandar.

It has been alleged that in this manner, after getting cancelled the wholesale dealership of the petitioner, the Assistant Registrar, Co-operative Societies, Nagaur issued a notice under Section 14(1) of the Act of 1965 proposing amendment in the bye-laws of the petitioner Society so as to bring about restriction of its area of operation to Gram Panchayat, Kherwa only; that the Manager of the petitioner

Society attempted to put objections (against the proposed amendment) but the same were not taken on record for want of authority; that the Assistant Registrar proceeded with a prior conclusion to amend the bye-laws of the petitioner Society and after recording that the President of the petitioner Society has not sent any proposal proceeded to order amendment of bye-laws by his order dated 28.11.2000.

Aggrieved by the said orders dated 23.10.2000 and 28.11.2000, the petitioner Society preferred a writ petition (CWP No.4732/2000) before this Court that was dismissed by the learned Single Judge on 05.10.2001 on the ground of availability of alternative remedy of preferring an appeal; and aggrieved by the order dated 05.10.2001 passed by the learned Single Judge, an appeal was taken to the Division Bench being D.B.Civil Special Appeal (Writ) No.872/2001. After hearing the parties, the said special appeal preferred by the petitioner Society was allowed on 09.10.2003 and the impugned orders were quashed; and the Special Leave Petition preferred by the Bhandar has since been dismissed by the Hon'ble Supreme Court on 19.11.2004.

The petitioner has averred that while passing the aforesaid judgment dated 09.10.2003 the Division Bench of this Court arrived at a conclusion that wholesale business was awarded to the petitioner Society in public interest by speaking

order and that recommendation to re-transfer was not founded on public interest but appear to be of petty interest of one of the Co-operative societies working under the supervision of Registrar, Co-operative Societies but was not providing efficient service in furtherance of distribution of levy sugar and wheat in Degana Tehsil and Parbatsar Tehsil of Nagaur District. The petitioner has reproduced in writ petition No.1802/2005 the observations made by the Division Bench of this Court while pronouncing against the stand of the Officers of the Co-operative Department which led the Food and Civil Supplies Department in handing over the wholesale business to the Bhandar. The petitioner has pointed out that this Court held that the impugned order not only suffers from malice in law but also suffers from arbitrary and capricious exercise of power without fulfilling the conditions precedent required for exercise of such powers and accordingly, the order passed by the Assistant Registrar on 28.11.2000 registering the amendment in bye-laws of the petitioner Society and so also the order passed by the Collector (Supply) on 23.10.2000 whereby the wholesale dealership was ordered to be handed over to the Bhandar were quashed by this Court. The petitioner has also pointed out that after the decision of this Court, its wholesale dealership for the entire Tehsil Degana was restored.

Coming to the cause of present litigation, in petition No.428/2005 it has been averred that the respondents have made yet another attempt to deny the petitioner from the wholesale dealership of levy sugar and wheat by a planned device. According to the petitoner, this time the Secretary, Department of Food and Civil Supplies, ignoring the judgment dated 09.10.2003 wrote a letter dated 26.07.2004 to the District Collector (Supply), Nagaur stating that Hirni Dhani Gram Sewa Sahakari Samiti (the petitioner Society) is not a Government Co-operative Society and, therefore, authority letter of the petitioner should be cancelled forthwith and the work of the area should be handed over to any nearby co-operative society and if such society was not in a position to work regularly, then the same may be handed over to it temporarily and thereafter procedure for inviting tenders should be initiated. It has been contended that the petitioner Society and so also the respondent Bhandar are the societies registered under the provisions of the Act of 2001 and are operating their business under the control of the State Government according to their respective bye-laws; and the petitioner Society as well as respondent Bhandar and so also all other societies registered under the Act of 2001 engaged in distribution of the commodities concerned are at par and by no

stretch of imagination, it could be said that the petitioner Society is not the one that is not controlled and administered by the State Government.

The petitioner has referred to the letter dated 18.08.2004 sent by the District Supply Officer, Nagaur to the Secretary, Food and Civil Supplies Department pointing out that the work was handed over to the petitioner Society in view of the decision of this Court and a copy of the aforesaid judgment dated 09.10.2003 was endorsed to the Secretary concerned. However, the Secretary, Department of Food and Civil Supplies in his response dated 28.09.2004 stated that decision of the High Court (aforesaid judgment dated 09.10.2003) essentially deals with the area of operation of the petitioner Society but according to the Department Circular dated 21.09.2004 issued for allotment of wholesale dealership of levy sugar and wheat, preference has to be given to the Society controlled and administered by the State Government and, therefore, stated that earlier order dated 26.07.2004 be complied with immediately.

The petitioner has also referred to the aforesaid circular dated 21.09.2004 and has submitted that from perusal of the communication dated 26.07.2004 and 28.09.2004 it appears that the circular dated 21.09.2004 was issued by the State Government so as to give strength to the stand taken by the

Department of Food and Civil Supplies in its earlier letter dated 26.07.2004.

The petitioner has averred that aggrieved of the communication dated 26.07.2004 and 28.09.2004 whereby Secretary, Department of Food and Civil Supplies had directed the District Supply Officer, Nagaur to cancel the authority letter of the petitioner Society, a representation was made to the Minister for Food and Civil Supplies on 04.10.2004; that the DSO did not choose to take any action for cancelling dealership of the petitioner Society, obviously for the reason that he was aware about correct position of law and about import of the Division Bench decision of this Court; that the Secretary, Food and Civil Supplies was, however, out and out to extend undue favour to the respondent Bhandar and, therefore, issued yet another communication dated 18.12.2004 whereby it was specifically ordered that the petitioner Society be relieved from the work of handling and transport agent and, instead, for the remaining period of the financial year, the respondent Bhandar may be appointed; that the petitioner on coming to know of such order, again made a representation but in vain; and that under the persistent persuasion of the Secretary, Food and Civil Supplies, the District Collector (Supply) Nagaur has issued a letter dated 10.01.2005 whereby in place of the petitioner Society, respondent Bhandar has

been authorised as wholesale dealer for the area.

The petitioner has challenged the orders dated 10.01.2005, 18.12.2004, 26.07.2004 and 28.09.2004 in writ petition No.428/2005 (marked therein as Annexures 16, 14, 9 and 10 respectively) on the ground that the orders impugned have been passed on non-existent facts; that the petitioner and the respondent Bhandar are the societies standing at par; that the Secretary while directing re-transfer of wholesale dealership to the respondent Bhandar has acted in perfunctory manner and has not provided any opportunity of hearing to the petitioner Society; that the judgment dated 09.10.2003 has deliberately been ignored though there had been categorical observations of this Court that dealership was given to the petitioner Society in the public interest whose cancellation was not founded in public interest but was made on petty business interest only of one Co-operative Society (the respondent Bhandar) which was not providing efficient service. The petitioner has contended that the respondent No.2 Secretary has ignored the judgment of this Court rather with impunity; and, relying upon the findings aforesaid of this Court that cancellation of the dealership of the petitioner was ordered in arbitrary and capricious manner and was aimed only at extending undue favour to the respondent Bhandar, the order passed by the respondent No.3 has been assailed.

According to the petitioner, it has the entitlement to carry on its business in conformity with the bye-laws and the provisions of the Act of 2001; and the respondents have no authority to impose any restriction on its trade and business contrary to law and none of the rules or orders governing the allotment of wholesale dealership of the co-operative societies permit such restriction being imposed on allotment of dealership to the Society like the petitioner. Thus, maintaining that the public authorities were seeking to extend undue favour to the respondent Bhandar, the petitioner has prayed for the relief of quashing the impugned orders by appropriate writ, order, or direction.

This writ petition No.428/2005 was considered by this Court on 01.02.2005; and after hearing the petitioner and the respondent Bhandar appearing in caveat this Court passed the order admitting the writ petition and staying operation and effect of the order dated 10.01.2005 and the respondents were directed to restore the position as existing before 10.01.2005 treating as if no order was passed on 10.01.2005.

The next petition, CWP No.1802/2005, came to be filed by the petitioner on 28.03.2005 wherein, after reiterating all the background facts and the orders leading to writ petition No.428/2005 and the stay order passed by this Court, the petitioner submitted that appointment of handling and transport

agent to transport and distribute food grains including wheat and wheat products on wholesale basis for the year 2005-2006 having become due, letters were issued by the District Collector (Supply) Nagaur to all the existing handling and transport agents on 15.01.2005 asking for their consent for continuing the work in future; and the petitioner Society submitted its consent letter to work as transport and handling agent on the existing rates for the entire Tehsil Degana by communication dated 19.01.2005 and also submitted an agreement duly signed as required by the respondent Authority who informed the Secretary, Food and Civil Supplies about consent of all the co-operative societies having been obtained for the financial year 2005-2006. However, according to the petitioner, the respondents were out and out to deprive the petitioner Society from the wholesale dealership and now a device was planned so as to deny the petitioner of the wholesale dealership of foodgrains and sugar for Tehsil Degana for the year 2005-2006; and acting in perfunctory manner and ignoring decision of this Court, the Additional Registrar, Co-operative Societies issued a letter dated 13.02.2005 to the District Collector (Supply), Nagaur stating that as per the letter of Food and Civil Supplies Department dated 10.12.2004 while appointing wholesale dealers under the Public Distribution System, preference should be given to

the societies associated with RAJFED, CONFED and RAJSANGH and the conditions laid down in the letter dated 21.09.2004 be also complied with; that in the letter dated dated 08.10.2004 issued by the Joint Registrar, Co-operative Societies, Ajmer the petitioner Society was stated to be in category of such Societies for appointment as wholesaler dealer but the said letter (dated 08.10.2004) was not in accord with the instructions issued by the Food and Civil Supplies Department; and only the Bhandar falls in such category. The petitioner has averred that under the pressure of higher authorities, the Joint Registrar, Co-operative Societies, Ajmer Division, Ajmer has also issued a communication dated 22.02.2005 to the District Collector, Nagaur stating that as per the directions of Department of Food and Civil Supplies issued under various letters for Tehsil Degana, District Wholesale Sahakari Upbhokta Bhandar falls in the category for appointment as wholesale dealer and that the work of Gram Sewa Sahakari Samities was mainly to deal in agricultural debt, agricultural gins and retail dealership.

Stating the cause for filing this latter Writ Petition No.1802/2005, the petitioner has alleged that respondents-authorities of the Department of Food and Civil Supplies were hand-in-gloves with the authorities of Department of Co-operative Societies and were bent upon depriving the

petitioner Society from wholesale dealership of food grain and sugar for Tehsil Degana and, according to the petitioner, it has come to know that under the pressure of the authorities, the respondent No.3 [District Collector (Supply), Nagaur] was not going to continue wholesale dealership of food grain and levy sugar for Degana Tehsil in favour of the petitioner for the financial year 2005-2006.

It has been contended that the petitioner Society and all other societies registered under the Act of 2001 engaged in the wholesale distribution of sugar, wheat and other consumer items are at par and it cannot be said that the petitioner was not a Society controlled and administered by the State Government; that there is no concept of government and non-government institution so far the provisions of the Act of 2001 are concerned; that such concept of government controlled and administered institutions and other institutions was only a creation of the respondent No.2 so as to extend undue favour to the respondent Bhandar. The petitioner has submitted that it felt advised to assail validity of the aforesaid circulars and, therefore, filed the said writ petition No.1802/2005 challenging the orders dated 21.09.2004 and 10.12.2004 (Annexures 13 and 21) issued by the Secretary, Department of Food and Civil Supplies, Jaipur and so also the communication dated 13.02.2005 (Annexure 22) sent by the Additional Registrar,

Co-operative Societies, Jaipur and the communication dated 22.02.2005 (Annexure 23) sent by the Joint Registrar, Co-operative Societies, Ajmer Division, Ajmer to the District Collector, Nagaur. This writ petition was taken up by this Court for consideration on 29.03.2005 and while issuing notice for final disposal, this Court by way of interim order directed that licence in question shall not be granted by the respondents to anybody else except the petitioner for the entire Tehsil Degana till further orders. The respondent-Bhandar who was initially not impleaded a party in this writ petition was permitted to join as respondent No.7 on its application.

In the reply submitted on behalf of respondents Nos.1,2 and 3, i.e. the State of Rajasthan, the Secretary, Department of Food and Civil Supplies and the District Collector (Supply), Nagaur, the averments of the petitioner Society regarding recommendations of the District Collector (Supply) dated 18.07.1998, have not been disputed. However, according to the answering respondents, in the State of Rajasthan door-step procedure was effective under which wholesale dealers were putting up wheat from Food Corporation and directly supplying it to fair price shops and so far sugar is concerned, the retailer is being paid to put the same from the godown of the wholesaler and, thus, the question of inconvenience as suggested by the petitioner does not arise. It has been

suggested that as per amended clause (ii) of clause (1) of the bye-laws of the petitioner Society, its area of operation is only within the Gram Panchayat, Kherwa and for non-credit business, it is Tehsil area Degana. In relation to the averments about the Division Bench decision of this Court dated 09.10.2003, it has been submitted that the said order was not applicable or attracted to the instant case. The respondents have submitted that in view of the aforesaid door- step system, the headquarter of wholesale dealer does not affect the supply nor causes any inconvenience to the public. The respondents have admitted that the District Supply Officer, Nagaur by the communication dated 05.05.2004 informed that according to the letter received from the Assistant Registrar, Co-operative Societies, respondent-Bhandar and the petitioner Society both were the Co-operative institutions and both were registered under the provisions of the Act of 1965; and with regard to respondent Bhandar it was intimated that it was a central institution and on the post of its Chief Executive, the Inspector of the Co-operative Department was working and on the post of Administrator, the Director, Central Co-operative Bank, Nagaur was working; whereas the petitioner being primary co-operative institution, its Manager was of bank level and it was not having any administrator and was controlled by the Management Committee. According to the respondents, the

questioned letter dated 26.07.2004 was written on the basis of such information.

The respondents have maintained that merely for being a co-operative, it does not authorise any Society to do the business of wholesale dealership; since there are departmental provisions to provide preference to the co-operative societies in the wholesale dealing and where these societies show their unwillingness, then open competitive tenders are invited. It has been maintained that for the purpose of putting restrictions on the illegal working of various co-operative societies, the State has issued certain directions on 14.10.2002 to the effect that only State Government's co-operative societies may be sanctioned the work on the departmental rates without inviting tenders. The respondents have submitted that all the societies are registered under the provisions of the Act of 1965 and, therefore, for the purpose of making distinction and to define the State's Co-operative Societies, after thorough consideration, it was decided that the State's Co-operative Society is the one (i) where the capital investment is made by the State Government; (ii) which is connected with the central co-operative organisation at the level of the State; and (iii) where the Chief Executive Officer is appointed by the State Government. The respondents have submitted that with regard to government and non-government

co-operative societies, circulars have been issued and on their basis, the letters dated 28.09.2004 and 18.12.2004 were issued and in pursuance thereof the District Collector, Nagaur had issued the impugned order dated 10.01.2005. The Co-operative Department on its part had communicated on 18.02.2004 that it was the District Wholesale Bhandar that fell in the category of the Government Co-operative Societies and the petitioner Society did not.

Justifying the decision to deal with the Government Co-operative Societies, the respondents have pleaded that the propositions stated in the circulars dated 21.09.2004 and 10.12.2004 issued by the State Government are clear to the effect; since such co-operative societies are invested with the Government's capital, are managed by the State Government employees, and are connected with the higher co-operative societies, hence, they are more reliable than the other co-operative societies like the petitioner. The respondents have maintained that there was no mala fide intention behind the process followed by them that was in accord with the orders, circulars and guidelines issued by the State Government in this respect and, therefore, orders passed in this matter are perfectly legal, valid and justified and do not suffer from any infirmity. The grounds urged in the writ petition have accordingly been repelled.

The respondents have additionally submitted in reply to the grounds that they are fully competent to decide as to whom the wholesale dealership is to be awarded and which Co-operative Society is more reliable and efficient when there are more than one co-operative society ready to do the work of wholesale dealer; that the petitioner Society has lost its credibility for various reasons including that some quantity of wheat was seized by the competent authority, there was a matter regarding non-depositing of Rs.3,34,331/- against the former manager of the society, and the DSO has pointed out that there were dues against Shri Kishan Singh to the tune of Rs.4,12,541/-; that the letter written by the DSO clearly shows that Shri Kishan Singh has been referred as Ex-Manager and, therefore, the application submitted by the petitioner on 22.12.2004 before the State Government was not even authorised and the present writ petition was also incompetent; that the petitioner was only entitled to get reliefs in accordance with law governing the field as well as the circulars/orders/guidelines issued by the State Government and not otherwise; and that the petitioner has got alternative speedy, efficacious and statutory remedy.

It may be pointed out that a separate reply has been filed on behalf of respondents Nos.4 to 6 in the Co-operative Department, i.e., the Registrar, Additional Registrar, and Joint

Registrar that was placed on record by the learned Government Advocate only on 01.04.2006. In the said reply on behalf of the officers of the Co-operative Department, it has been maintained that the petitioner has not been denied any of his legal and/or fundamental rights and, therefore, the writ petition is not competent. In relation to the circular dated 21.09.2004 it has been maintained that the same was applicable throughout the State and was issued in the matter of appointment of wholesale dealers for food-grains and sugar on the premise that there should be uniformity in the matter of such appointments; and in order to give priority to the co-operative sector, all the Collectors and District Supply Officers were issued direction that wholesale dealers be appointed from the commencement of financial year; if tenure of one year was over, then afresh wholesale business might be given in accordance with clause (5) of the circular; and that those Co-operative societies should be given preference who are controlled by the State Government and the Chief Executive Officer has been appointed; and in case they decline, then only tenders should be invited; and that the said circular has further been circulated by the Registrar by his letter dated 13.12.2005 and so also by the Joint Registrar to the respective Collectors of the Division.

The said respondents Nos.4 to 6 have maintained that in the State of Rajasthan in the Co-operative Sector, there is a three-tier system; at the apex, there is a State Level Co-operative Society which is by and large called the State Co-operative Consumer Federation and at the district level, there are District Co-operative Wholesale Bhandars and at the primary level (i.e. panchayat level) there are Gram Seva Sahakari Samitis. According to the respondents, so far the Wholesale Bhandars at district level are concerned, they are having area of operation to the extent of respective districts and they can deal in the wholesale business of commodities whereas Gram Sewa Sahakari Samities could deal with controlled commodities at Gram Panchayat level in retail business; and, for Nagaur, there is a district level Society known as Nagaur Sahakari Upbhokta Bhandar and so far as wholesale distribution is concerned, it is to be entrusted to the said wholesale Bhandar. The respondents have pointed out that the petitioner was initially registered with the area of its operation limited to Panchayat, Kherwa; that its proposal to amend bye-laws so as to extend its area of operation beyond the Panchayat Samiti, Kherwa was earlier turned down; but then, on remand of the matter by the appellate authority, the Assistant Registrar passed an order on 25.10.1996 in favour of the petitioner Society only to the effect that area of operation

for non-credit business shall be to the extent of Degana Tehsil and not entire Nagaur District. The respondents have suggested that the extension of the area of operation of the petitioner Society upto Tehsil level was not found satisfactory in consonance with the spirit of the Co-operative movement and, therefore, the Assistant Registrar restricted the area of operation of the petitioner Society upto the Panchayat Kherwa only. The order was passed by the Collector on 23.10.2000 restoring the dealership for levy sugar in favour of the Wholesale Bhandar and Assistant Registrar had also passed the order on 28.11.2000 but that was set aside in special appeal aforesaid; and after the order was passed in special appeal, the handling and transportation work of food grains and sugar was entrusted to the petitioner Society for Degana Tehsil.

The respondents have maintained that the Government has considered the matter once again and has formulated a policy and circulated the same by its order dated 21.09.2004 declaring the procedure for appointment of wholesale dealers for food grains and levy sugar and clause (5) of the said circular was further clarified by the circular dated 10.12.2004 making it clear that only those co-operative societies which are controlled by the State Government could be appointed as wholesale dealers without calling for tenders. According to the

respondents, in these societies, there was huge government capital and the government was having complete control over them because the State Government appointed the Chief Executive Officer and same was the case with Nagur Sahakari Wholesale Upbhokta Bhandar. According to the respondents, such district level co-operative societies, which are controlled and administered by the State Government, are required to be given preference every year and are entitled to be appointed as wholesale dealer for food grains and levy sugar. The respondents have maintained that such a decision is absolutely in consonance with the policy of the government and in consonance with the co-operative movement of the State that does not suffer from any illegality nor is bad from any angle. According to the respondents, the relief prayed for would directly infringe the rights of the respective District Sahakari Whole Upbhokta Bhandars and in absence of them being the parties, the writ petition is liable to be rejected.

A separate reply to the writ petition has been submitted on behalf of respondent Nagaur Sahakar Upbhokta Bhandar Ltd. It has been stated that there is three-tier system of the co-operative societies viz., at village level, at district level and at State level; that there is different objective to constitute societies of a particular level so that they may look after the interests of their members. State level societies are like

Rajasthan Rajya Sahakari Upbhokta Sangh Ltd. (CONFED), Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd. (RAJFED) and Rajasthan Kshetriya Jan Jati Vikas Sangh (RAJAS Sangh) and these societies too are having distinct areas of operation; and transportation of wheat and sugar is carried out by the Rajasthan Rajya Sahakari Upbhokta Sangh Ltd. (CONFED). The respondent Bhandar has alleged that the petitioner is essentially a society of village level; that in every district, there are hundreds of such societies and in Nagaur District itself there are above 280 such societies and they are meant for serving the people of respective villages; and in ordinary course, they are not supposed to undertake non-credit business; that according to the bye-laws, such societies are supposed to provide loans to the members so as to facilitate their profession as agriculturists in purchasing seeds, manure and other necessary items for cultivation and farming; and that only the respondent Bhandar is having area of operation extending to the entire District and is entitled to undertake the non-credit business throughout the District.

The respondent Bhandar has submitted that the petition is wholly misconceived being essentially directed against the policy decision of the Government as contained in the circular Annex.13; that policy decisions of the Government are not subject to any judicial review until and unless they were

inconsistent or unconstitutional. According to the respondent, the Government appears to have taken a policy decision that the wholesale business of wheat and sugar shall be entrusted only to those co-operative societies which are controlled by the State Government and are Government administered co-operative societies; and there appears to be a lawful object which was sought to be achieved inasmuch as the business of wholesale distribution of wheat and sugar is a large scale business and is required to be entrusted to the Society which could do it in a proper manner and at the same time Government could have controlled over it. Stating its structure, the contesting respondent had submitted that it was controlled by the State Government because its Manager was deputed by the Government and the Managing Director was also government employee; and it were only the district level wholesale Co-operative Society which was eligible and entitled for doing business as envisaged in the government circular; and on the other hand as the petitioner Society was not covered therein, it was not entitled to have the business of non-credit such as distribution of wheat or sugar. According to the respondent, amendment of bye-laws has nothing to do with the present controversy and has got no bearing on it as unnecessarily sought to be highlighted by the petitioner in the writ petition. Further, according to the respondent, Division

Bench decision has no bearing on the matter as such; and so far business of distribution of wheat and sugar is concerned, it is entrusted every year and, therefore, the petitioner cannot claim any perpetual right; and as a matter of fact, the petitioner is not even eligible to participate in view of the policy decision as contained in Annex.13.

The respondent Bhandar has submitted in the alternative that even if it be assumed for the sake of arguments that the petitioner Society was eligible one, then too nothing turns upon it because there are so many societies which are having about 200 members and then every Society would have chance to participate; that it being a large scale business, the petitioner Society was not capable of doing it and even in past when it was entrusted such work, it has not given desirable result and has miserably failed. The respondent has levelled allegation that in the matter of transportation and distribution of wheat and when the same was being carried out by the petitioner, it committed large bungling and a huge demand was created; the DSO issued a certificate for effecting recovery too; and a case was registered against the petitioner for such recovery in the Court of Sub-Divisional Officer, Degana being case No.1/2004. It has also been alleged that wheat sought to be misappropriated was intercepted and seized; and a news item published in the

newspaper has been referred in that regard.

It has been maintained that only by way of amendment of bye-laws, the petitioner cannot claim a right to undertake the non-credit business to the exclusion of others and by its very nature, the business is required to be carried out by the Society over which the Government has complete control and is the one administered by the government. The allegations levelled against Bhandar for causing inconvenience to the public have been denied. The answering respondent has reiterated the stand of other respondents about correctness of the communications earlier made.

In relation to the aforesaid decision of the Division Bench, it has been maintained that the field covered by the decision is required to be seen in the context of the controversy involved; and that the court would not be deciding an issue not before it. According to the respondent, the issue before the court related to amendment of the bye-laws and there was no controversy with regard to the scope and extent of business of the petitioner Society. It has been maintained that the Government has every right to take policy decision in the matter of distribution of wheat and sugar; and the Department of Food and Civil Supplies while issuing the letter dated 26.07.2004 has not committed any mistake nor has acted contrary to the decision of this Court. It has been

emphasised that the government has complete control over the Bhandar and its Managing Director and Manager are appointed by the government; whereas the government has no control over the Society like the petitioner.

The answering respondent Bhandar has maintained that the Government has a right to take decision about distribution of the essential commodities and for the purpose of task being that of district level, the Government has rightly thought it proper to entrust the same to the Co-operative Society controlled and administered by it; and the answering respondent being the one answering to such requirement has rightly been entrusted the work, and is entitled thereto. It has been maintained that the decision so taken by the Government is applicable to the entire State and has not been taken for the purpose of petitioner Society alone and there is no question of any mala fide in the same. The answering respondent would maintain that the concept of 'Government Co-operative Society' has definite and clear connotation of government controlled and administered Society like the answering respondent and that throughout the State, such task was entrusted only to the District Wholesale Bhandar like the respondent.

Arguing for the petitioner, learned counsel Mr.Sangeet Lodha, after giving the history of litigation the petitioner has

been through while amending its bye-laws, pointed out that the letters dated 16.01.1999, 09.02.1999 and 07.05.1999 were issued stating incorrect facts though bye-laws had already been amended and quota was entrusted to the petitioner and even challenge to the same by the respondent Bhandar had failed. Learned counsel referred to the decision rendered by the Division Bench of this Court on 09.10.2003 and submitted that with the rights of the petitioner having crystallized in view of the binding decision of this Court, the respondents planned the device to somehow prevent the petitioner from continuing with the wholesale business in its area of operation. Learned counsel submitted that letter dated 26.07.2004 (Annex.10) was issued on non-existent facts and even so-called policy decision was taken only thereafter as if to provide ex post facto strength to the letter dated 26.07.2004. Learned counsel submitted that such decisions were nothing but mala fide exercise of powers; that there is no such expression known to the Co-operative Act about Government Co-operative Society; that only the Collector is the authority to decide about the authorisation to be issued for the purpose of dealing in essential commodities; that before directing transfer of the business from the petitioner to the respondent-Bhandar, no opportunity of hearing was extended and the order was made in a wholly perfunctory manner; and that the Division

Bench decision of this Court was not kept in view and non-speaking orders were passed. Learned counsel emphasised that no rule or order governing allotment of wholesale dealership to co-operative societies permits any such restriction being put of allowing dealership to a so-called Government Co-operative Society and in fact there is no concept of any Government Co-operative Society at all. Learned counsel further submitted that if at all any such concept of 'Government Co-operative Society' is pressed into service for the purpose of awarding of wholesale dealership, the petitioner Society is no different inasmuch as it too answers to the description sought to be suggested by the respondents as the State has its share capital in the petitioner Society too; the petitioner Society is also a member of Rajashan Kray Vikray Sahakari Samiti; is authorised dealer of fertilizers on behalf of RAJFED; is shareholder of Indian Farmer Fertilizers Ltd and, thus, the petitioner fulfills all the requirements as sought to be formulated for the purpose of policy decision of the State Government providing preference to the so-called Government Co-operative Society. Learned counsel urged that the impugned orders deserve to be quashed and set aside on parity of reasonings of the Division Bench decision of this Court. It was also contended that the orders directly infringe upon the legal rights of the petitioner

and have been issued even contrary to public interest apart from suffering from the vice of malice in law.

Per contra, learned counsel for the respondent Bhandar Mr.M.R.Singhvi has strenuously contended that the order Annex.13 is essentially a policy decision of the Government; that the petitioner has failed to plead and prove as to how such policy decision is contrary to law; that such is a decision taken for the entire State of Rajasthan and is not limited to the petitioner Society alone. Learned counsel submitted that the allegations of mala fide are totally bereft of substance and are baseless. Learned counsel submitted that entire writ petition is based on incorrect premise as if the petitioner has a right of trading in essential commodities. It was ultimately for the Government to regulate the distribution of essential commodities and the Government has taken a decision in conformity with law. Learned counsel also urged that this Court would be slow in interfering with the policy decision of the government and the classification brought about by the Government is neither illegal nor unauthorised. Learned counsel maintained that there is a clear distinction available in the set up of Co-operative societies where a Society like respondent Bhandar answers to the description of a 'Government Controlled Society' as contemplated by the said policy decision and there is nothing illegal in the Government's

decision to provide preference to such Society in the matter of wholesale dealing in the essential commodities for the entire District.

Learned Government Advocate has supported the impugned orders while adopting the submissions made on behalf of the contesting respondent Bhandar and has also referred to the fact that there were substantial dues against the petitioner who has not been found working properly and submitted that the order dated 21.09.2004 (Annex.13) has been issued for the entire State of Rajasthan and is not a decision taken in relation to the petitioner alone.

Learned counsel for the petitioner rejoined with the submissions that the order Annex.13 is mala fide one and has been issued in misuse of the powers; that no such policy decision could have been taken without amendment of the Rajasthan Food-grains and other Essential Commodities (Regulation of Distribution) Order, 1976 ('the Order of 1976' hereafter) and the petitioner could not be treated different than the respondent Bhandar. Learned counsel submitted that the Government cannot take decisions which are irrational or whimsical and the decisions are required to be taken in furtherance of the objects to be achieved. Learned counsel emphasised that it is not the case of the Government that the facts and factors noticed by the Division Bench of this Court in

its decision dated 09.10.2003 have ceased to exist and submitted that if the petitioner was not working properly, then steps could have been taken to cancel the authorisation in accordance with law but it were not so. Learned counsel urged that the Order of 1976 cannot be ignored and submitted that so-called policy decision is based on no reasons and the respondents cannot supply reasons now in answer to the writ petition.

Learned counsel for the respondent Bhandar made submissions in sur-rejoinder that there is no inconsistency in the policy decision of the Government and if the Order of 1976 did not provide for anything, the Government was entitled to provide for the same in its policy decision. In relation to the submission about malice in law, learned counsel Mr.Singhvi submitted that such proposition in law has got definite connotation where it is required to be shown that the decision was not taken bona fide and was taken to achieve some different objectives and was plainly contrary to law. Learned counsel submitted that when the order is based on reasons and not in arbitrary exercise of powers, it cannot be said to be suffering from any malice in law. Learned counsel also submitted that the argument raised on behalf of the petitioner about operation and effect of the Order of 1976 has no foundation in the pleadings at all; and even otherwise the

Order of 1976 is not applicable to the dispute at hands. Learned counsel for the parties have referred to various decisions, in support of their respective contentions.

The rival submissions have been given thoughtful and anxious consideration and the entire record has been scanned through.

The submissions made by learned counsel for the parties give rise to multiple questions in the present case; however, the fundamental question remains about the rights of the litigating parties and it shall be apposite to refer to such legal rights before dilating on other aspects.

By virtue of Article 162 of the Constitution of India, the executive power of a State extends to the matters with respect to which the Legislature of the State has the powers to make laws. Trade and commerce in, and the production, supply and distribution of food stuffs is covered by Entry-33 in List III of Seventh Schedule and, therefore, obviously the executive power of the State extends to such matters; and the Government can make a scheme of distribution of food stuffs and, as a necessary corollary, can provide criterion for authorisation of handling of such work of distribution of food stuffs. The Order of 1976 has been issued by the State Government for maintaining supplies of food grains and essential commodities and securing its equitable distribution

and availability; and no person other than an authorisation holder could sell any of the food grains or any other essential articles that are supplied by the Government. The executive power of the State to issue guidelines for grant of authorisation under the Order of 1976 and so also for appointment of its dealers, retailers, or wholesalers cannot be doubted.

There is no fundamental right in any person to be appointed as an authorisation holder of the Government; and for the very object sought to be achieved by such regulation of distribution, the relevant and necessary executive instructions issued by the Government cannot be said to be unauthorised or unwarranted. The petitioner, and for that matter any person, cannot be acceded a right to question the executive power of the State to lay down such policy decisions and to issue such guidelines. The Hon'ble Supreme Court in the case of Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and another: (1981) 4 SCC 535 has held,-

> "The question whether fair price shops in the State of Madhya Pradesh under a Government Scheme should be directly run by the Government through the instrumentality of consumers' cooperative societies as its agents or by retail dealers to be appointed by the Collector under Clause 3 of the Control Order, is essentially a matter of policy with which the Court is not concerned."
>
> ....
>
> "There is no fundamental right in any one to be appointed as an agent of a fair price shop under a Government Scheme."

Thus, it is clear that framing of a scheme in the matter of distribution of foodstuffs is essentially a matter of Government policy and in such policy decisions, ordinarily, interference by the court is not called for. The rights professed by the petitioner in the present case of being entitled to be appointed and continued as a dealer of the Government are required to be examined and considered on the touchstone of the law aforesaid that ultimately such decision remains within the realm of Government Policy.

The petitioner has challenged the guidelines issued by the Government in its Food and Civil Supplies Department dated 21.09.2004 being illegal and mala fide in the backdrop of the facts relating to itself; and it has been asserted that such guidelines were issued only in order to deprive the petitioner of its right to continue as the authorisation holder of wholesale dealership for Tehsil Degana. The contentions of the petitioner are pivotally based on the Division Bench decision of this Court in its earlier appeal and hence, it appears necessary to consider the ratio, result and effect of the said Division Bench decision.

It is to be noticed that before the Hon'ble Division Bench was an appeal filed against the judgment dated 05.10.2001 by the learned Single Judge whereby the writ petition filed by the

petitioner was dismissed on the ground of availability of alternative remedy to prefer an appeal against the impugned orders. The impugned orders in the said case came to be issued and made fundamentally in relation to the dispute about amendment in the bye-laws of the petitioner society. From the background facts noticed hereinbefore, it is apparent that on 30.10.1994 the petitioner society resolved to extend its area of operation from Gram Panchayat, Kherwa to the entire District Nagaur for non-credit business and the petitioner wanted to amend its bye-laws to that effect. The desired amendment was refused by the Assistant Registrar, Co-operative Societies on 30.03.1995 but the appeal preferred by the petitioner was allowed by the Additional Registrar, Co-operative Societies, Jodhpur on 30.05.1996 and the Assistant Registrar was directed to decide the matter as per law; in pursuance of order by the appellate authority, the Assistant Registrar allowed the amendment but with modification that area of operation of non-credit business of the petitioner was permitted to be extended to Tehsil Degana only and not to the entire District of Nagaur as proposed; general notice inviting objections regarding amendment was issued on 29.10.1996; and ultimately the Assistant Registrar registered the amendment in the bye-laws on 22.11.1996. Thus, the matter regarding amendment of the bye-laws of the petitioner society

attained finality and it could be said that the petitioner society has invested itself with the right to extend its business activity particularly in relation to non-credit business within the Tehsil area of Degana.

A look at the recommendation made by the Collector (Supplies) Nagaur dated 18.07.1998 reveals that at the relevant time, a similar society at Gachhipura was appointed as wholesale dealer for Tehsil Parbatsar and the petitioner society had been appointed as wholesale dealer for Tehsil Degana but they were not dealing in the work of levy sugar that was being conducted through the respondent-Bhandar; and the Collector (Supplies) noted that the Branches of Bhandar were not situated in Tehsil Parbatsar and Degana and the retailers were supplied sugar from outside the Tehsil Headquarter that was leading to inconvenience and, therefore, it was suggested that the work of levy sugar be allotted to the said society at Gachhipura for Tehsil area Parbatsar and to the petitioner Society for Tehsil area Degana.

It appears that the Food and Civil Supplies Department allowed the work to be executed by the petitioner Society as proposed by the Collector (Supplies) by its order dated 03.10.1998 and that necessarily led to reduction of quota of sugar allowed to the Bhandar for the month of October 1998. The Bhandar attempted to challenge the said decision of the

Dy. Commissioner, Food and Civil Supplies Department by way of writ petition; and it was suggested before this Court that by the said impugned order dated 03.10.1998, the rights of Bhandar to do the business were vitally and substantially affected and the order was passed without any opportunity of hearing. The learned Single Judge of this Court found the submission having no substance for the reason that it was an authorisation for which no writ would lie. The learned Single Judge held that the authority, which had the power to give authorisation, could curtail the same for a limited period for which no opportunity was required. The learned Single Judge also noted the contention that impugned order was passed at the instance of the Special Assistant of the Food Minister and held that it would not mean that on that ground the order is required to quashed if the same was made for a particular period by which quota of sugar was reduced. It was suggested that the respondent No.3 therein (petitioner herein) was only a retail dealer and its area was later on extended for which also Bhandar had raised objection. The learned Single Judge held that this type of administrative decision could not be gone into by this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India. Challenge to the power to issue the order was also negated; and the writ petition was dismissed. It is not in dispute that the respondent Bhandar filed special

appeal against the said decision but then proceeded to withdraw the appeal as well as the writ petition and the same were dismissed as withdrawn on 14.01.1999.

The role, thereafter, of the Department of Co-operative Societies of the Government of Rajasthan had been seriously questionable. The Assistant Registrar, Co-operative Societies, Nagaur is his communication dated 16.01.1999 to the District Supply Officer, Nagaur stated that the area of operation of the petitioner society was limited to Gram Panchayat, Kherwa (thereby suggesting that its area of operation was not beyond). The Registrar, Co-operative Societies proceeded to espouse the cause of Bhandar in his letter dated 09.02.1999 addressed to the Collector, Nagaur. The Joint Registrar again suggested to the Additional Food Commissioner that the respondent Bhandar was carrying on the work quite satisfactorily for the last 20 years and be appointed as wholesale dealer of levy sugar for Tehsil Degana. The Assistant Registrar repeated his recommendation respectively to the District Collector (Supplies) and to the District Collector by the letters dated 01.06.1999 and 18.08.2000. Yet another letter was addressed by the Registrar, Co-operative Societies on 17.10.2000 whereupon was issued the questioned order dated 23.10.2000 by the District Collector (Supplies) Nagaur stating that the Registrar, Co-operative Societies has suggested that the work

for Degana Tehsil be allotted to the Nagaur Sahakari Upbhokta Wholesale Bhandar Limited because only the Bhandar was authorised to deal in the wholesale work and the petitioner Society was not. The said Collector stated that final decision was to be taken in the matter after hearing and, therefore, for the purpose of so-called interim arrangement, the petitioner society may distribute the material already lifted by it and further work of wholesale distribution of sugar and wheat be executed by Bhandar; and it was suggested that Bhandar shall establish its branch and godown at Tehsil Degana.

Thereafter, the Assistant Registrar proceeded to issue the impugned order on 28.11.2000 on the basis of an alleged notice dated 07.11.2000 and for not filing of the objection by the petitioner society. By this order dated 28.11.2000, the Assistant Registrar proceeded to amend the bye-laws of the petitioner society restricting again its area of operation to Gram Panchayat, Kherwa.

The aforesaid orders dated 23.10.2000 by the District Collector (Supplies) and dated 28.11.2000 by the Assistant Registrar Co-operative Societies were the subject matter of litigation in writ petition filed before this Court by the petitioner Society being S.B.Civil Writ Petition No.4732/2000 that was dismissed by the learned Single Judge on the ground of availability of alternative remedy. In appeal, Division Bench of

this Court considered all the facts and circumstances leading to the appeal and found that the order was made entrusting the work of wholesale dealing in levy sugar to the petitioner on the paramount consideration of convenience of general public and it was noticed that immediately after the respondent Bhandar failed in its writ petition and withdrew its special appeal on 14.01.1999, orchestrated recommendations came flooding in from the Registrar and the Assistant Registrar of Co-operative societies on the sole proposition that the work of wholesale dealing be withdrawn from the petitioner society and be allotted to the respondent Bhandar. Such recommendations and suggestions were fundamentally based on an absolutely untruthful, incorrect and rather mala fide suggestion of the fact that the area of operation of the petitioner society was limited to Gram Panchayat, Kherwa; though it was in the knowledge of the concerned Officers of the Co-operative Department that by way of amendment made as back as on 22.11.1996, the area of operation of the petitioner Sciety stood extended to Tehsil Degana. The Division Bench of this Court strongly disapproved the conduct of the Officers of the Co-operative Department and observed,-

> "We have failed to understand and no satisfactory explanation has been given by the learned Registrar, Co-operative Societies, why consistently orchestrated recommendations were made in the matter of grant of wholesale business to Nagaur Sahakari Upbhokta Bhandar when it

was already being transacted by petitioner co-operative society by giving wrong fact about its extended area of operation in relation to non-credit business through the entire Tehsil Degana. Read between the lines, the only inference can be drawn is that the officers of the Registrar of the co-operative society, became advocate for pleading the cause of interest of the wholesale societies by keeping the state officers concerned incorrectly informed, forgetting that strengthen the smaller societies ought to be their concern as much and also ignoring the public interest in which the wholesale business in levy sugar and wheat was handed over to the petitioner assessee. Not a word about that.

"It is more than coincidence that all these orchestration has followed quick on heels after the Nagaur Wholesale Sahakari Upbhokta Bhandar lost its challenge in High Court, when its writ petition was dismissed and special appeal was preferred against the judgment of the learned Single Judge, only to be withdrawn with the writ petition itself so soon to take out the effect of judgment. The said wholesale Bhandar got the writ petition and special appeal dismissed on 14.1.99, the Registrar's office at all levels took up the cause of lost petitioner with effect from 16.01.99, as if the withdrawal of writ petition was at the advice of co-operative Deptt.

"When the food and supplies Collector was informed about the area of operation of the petitioner co-operative society, it could only happen either by gross negligence without caring to look at the orders passed earlier or deliberately at the behest of the Wholesale Upbhokta Bhandar who was trying to frustrate the extended activities of the petitioner co-operative society firstly by judicial process. Having failed there, he tried to get rid of the finding recorded in the writ petition by withdrawing the special appeal and then relied on administrative authorities to pursue its cause by giving wrong facts about the area of operation of the petitioner society.

> "Without going further into this question, the conduct of the officers of the Registrar, co-operative societies clearly conveys a case of malice in law."

The Division Bench held,-

> "From the proceedings aforesaid noticed by us, it is apparent that the Department of the Co-operative Society was determined to see that the business of wholesale distribution of levy sugar and wheat within Tehsil Degana is not handed over to the petitioner society for which the continuous recommendations were made by the Department at different levels by the officers of co-operative society, soon after Bhandar has been unsuccessful in its attempt to challenge the order of allotting wholesale business of levy sugar and wheat for Tehsil Degana to the petitioner. One fail to understand if the business of the Nagaur Sahkari Upbhokta Bhandar Nagaur was being affected, why its cause was being pursued by the officers of the department. Nagaur Sahakari Upbhokta Bhandar, which itself is a juristic person. To safeguard its interest, it has filed a writ petition against the transfer of its business to the petitioner society which was rejected by the learned Single Judge and in appeal against the same was withdrawn. Presumption is that since the appellate forum was not inclined to interfere, it was considered strategic to withdraw the writ petition itself, lest finding recorded in it may come in its way to seek a favourable response from the office of the Registrar of Co-operative Societies. They readily obliged within two days of dismissal of lis pursued by the Bhandar as if the course of events was already decided in advance in consultation."

The Hon'ble Division Bench found that the entire exercise leading to the impugned order was founded on a fundamentally incorrect fact as if the area of operation of the petitioner society was limited to Kherwa Panchayat whereas

the fact was that area of operation had been extended to Tehsil Degana by way of amendment. The mala fide on the part of Co-operative Department was confounded with issuance of order of re-amendment of the bye-laws of the petitioner society on 28.11.2000; that was made only after the Officers of the Co-operative Department succeeded in persuading the Food and Civil Supplies Department in withdrawing the work from the petitioner. The Hon'ble Division Bench set aside all such illegal orders, of amendment in the bye-laws of the petitioner society (dt.28.11.2000) and of withdrawing of the work from the petitioner society (dt.23.10.2000).

The petitioner has principally referred to the said decision of the Division Bench and has contended that the orders later on passed by the Food and Civil Supplies Department are directly in conflict with the said decision of the Division Bench of this Court; and the submissions of the petitioner are in essence to the effect as if, the Division Bench of this Court has conclusively pronounced on its right to carry on wholesale dealership. This Court is clearly of opinion that the suggestion by the petitioner as if the right of wholesale dealing in the commodities concerned has become its right in perpetuity because of the decision of this Court is not the correct reading of the effect of the judgment of this Court; and

the petitioner is not correct in assuming that the decision of this Court dated 09.10.2003 has put curtains on the rights of the State Government to frame a relevant policy and to get the same implemented for the purpose of dealing in the commodities concerned.

It is trite in law that a judgment of the court cannot be read as a statute and a decision is conclusive in relation to the matter directly and substantially in issue before the court. As noticed above, in the aforesaid decision dated 09.10.2003 the Hon'ble Division Bench was essentially concerned with mala fide attempts on the part of Co-operative Department in suggesting to the Food and Civil Supplies Department that area of the petitioner Society was limited to Gram Panchayat, Kherwa contrary to record and in making recommendations that a particular work be withdrawn from the petitioner and be allotted to another society i.e. the respondent Bhandar; and then to attempt amendment of the bye-laws of the petitioner Society. Such exercise on the part of Co-operative Department was obviously mala fide and the Hon'ble Division Bench did not approve of the same. However, while rendering the said decision the Hon'ble Division Bench observed,-

> "Else the distribution of such business is concern of Department of Food and Supply and the Registrar, Co-operative Society is not really concerned with such functioning."

The said decision of the Division Bench of this Court, cannot be read in support of petitioner's proposition that thereby and therefrom its right to carry on wholesale dealing has become final. The said decision could only be read to the effect that the earlier order withdrawing the allotted work from the petitioner on the assumption that area of its operation was limited to Kherwa Panchayat were not correct and was an outcome of misinformation deliberately feeded by the Co-operative Department; and that the exercise of forcing amendment in the bye-laws of the petitioner Society as taken up later by the Co-operative Department was moreover malafide. However, as observed by the Hon'ble Division Bench too, regulation and distribution of business was essentially the concern of Food and Civil Supplies Department. Such regulation and distribution by the Food and Civil Supplies Department was as such neither the subject matter nor the Hon’ble Division Bench rendered any such decision that petitioner has a perpetual right to carry on the wholesale business, or for that matter, any business as authorisation holder of the Government.

The petitioner has suggested that the order dated 26.07.2004 has been issued by the respondents in yet another attempt to deprive the petitioner-society from wholesale dealership by a planned device. This Court is unable to

countenance such blanket allegation of the petitioner. The letter dated 26.07.2004 had been issued on the reasoning that the petitioner society was not a Government Co-operative Society and, therefore, its authorisation was required to be cancelled and the work was required to be handed over to a Government Co-operative Society. In response to the said letter dated 26.07.2004, the District Supply Officer, Nagaur informed the Secretary, Food and Civil Supplies Department that the petitioner was handed over the work in accordance with the decision of this Court dated 09.10.2003 and the copy of the decision was endorsed for further instructions. The Secretary thereafter sent a copy of the guidelines issued by the Government on 21.09.2004 and pointed out that earlier litigation before the High Court was related primarily to the area of operation of the petitioner society but according to the government decision dated 21.09.2004, in the matter of appointment of wholesale dealers for food grains and sugar, the Co-operative societies controlled and administered by the Government were to be given preference and, therefore, the order dated 26.07.2004 was asked to be complied with.

It appears that the matter had again acquired the attention of the Department of Co-operative Societies, this time to start with probably on a communication sent by the Manager of the petitioner Society seeking clarification about the control

and share of the government in the society; and the Registrar pointed out that the petitioner society was equally a registered co-operative society and control of the government was the same. However, on the other hand, it appears that the orders issued by the Secretary, Food and Civil Supplies Department for removing the petitioner society and handing over the work to the respondent Bhandar were not complied with and, therefore, the Secretary, Food and Civil Supplies Department issued communication dated 18.12.2004 for immediate compliance of the order dated 29.09.2004.

In pursuance of the order dated 18.12.2004, the Collector (Supplies) proceeded to issue the impugned order dated 10.01.2005 appointing the respondent Bhandar as wholesale dealer in place of the petitioner society and the Manager of the respondent Bhandar was asked to execute the agreement of Rs.100/- non-judicial stamp paper. The said order was challenged by the petitioner by filing writ petition No.426/2005 and this Court admitted the petition on 01.02.2005 after hearing learned counsel for the petitioner and learned counsel appearing in caveat for the respondent Bhandar and stayed operation and effect of the order dated 10.01.2005 and directed the respondents to restore the position as it existed before 10.01.2005.

The petitioner has submitted that the circular dated 21.09.2004 has been issued by the State Government so as to give strength to the stand taken by the Food and Civil Supplies Department in its letter dated 26.07.2004. The petitioner does not appear correct in making this suggestion. The circular dated 21.09.2004 has got nothing to do with the petitioner Society or the respondent Bhandar in particular; and has been issued as a general policy decision of the State Government in its Food and Civil Supplies Department uniformly applicable to the entire State. It has been decided that the wholesale dealer shall be appointed for the financial year from 1st April to 31st March and the authorisations of individual wholesale dealers who had been working for over one year and were appointed without process of calling for tenders may be cancelled and in their place, wholesale dealers be appointed as provided under point No.5. It has also been decided that every year consent letters for next financial year be obtained in the month of January; process of tenders be commenced in the month of February and be completed by first week of March so that agreements be concluded by 31st March and appointment be made for the financial year. It has been stated in point No.5 that the Co-operative Societies controlled and administered by the State Government be given preference and may be

allowed the work on departmental rates and upon their disinclination, process of tender be undertaken thus:

> “5. राज्य सरकार द्वारा नियन्त्रित एवं प्रशासित सहकारी संस्थाओं को प्राथमिकता दी जावे, इन्हें विभागीय दर पर कार्य दिया जावे एवं इनके द्वारा असहमति व्यक्त कर दिये जाने के पश्चात ही निविदा सम्बन्धी कार्यवाही की जावें ।"

Further by the circular dated 10.12.2004, the Government proceeded to clarify the description of societies referred to in the said point No.5 of the circular dated 21.09.2004 to the effect that:-

> "विषयान्तर्गत विभागीय आदेश क्रमांक एफ 40(2) खा.ले./नीति/2004 दिनांक 21.9.2004 के बिन्दु संख्या 5 में राज्य सरकार द्वारा नियंत्रित एवं प्रशासित सहकारी संस्थाओं को थोक विक्रेता के कार्य में प्राथमिकता दिये जाने एवं इन्हें बिना निविदा के विभागीय दर पर कार्य दिये जाने हेतु निर्देशित किया गया था । राज्य सरकार द्वारा नियंत्रित एवं शासित संस्था से आशय "राजस्थान राज्य सहकारी क्रय विक्रय संघ लि. (राजफैड), राजस्थान राज्य सहकारी उपभोक्ता संघ लि. (कॉन्फैड) व राजस्थान क्षेत्रीय जन जाति विकास संघ (राजस संघ) से संबद्ध संस्थाएं तथा ऐसी संस्थाएं जिनमें राजकीय हिस्सा पूंजी लगी हुई है एवं जिनके मुख्य कार्यकारी अधिकारी की नियुक्ति राज्य सरकार द्वारा की जाती है" से है । अत: सार्वजनिक वितरण प्रणाली के अन्तर्गत थोक विक्रेता की नियुक्ति में इन संस्थाओं को ही प्राथमिकता दी जाएगी । इनको बिना निविदा आमंत्रित किये कार्य आवंटित किया जा सकता है एवं संबंधित क्षेत्र तथा जिले की ऐसी संस्थाओं द्वारा लिखित में थोक विक्रेता का कार्य करने से मना करने पर नियमानुसार निविदा प्रक्रिया अपनाकर थोक विक्रेता का कार्य आवंटित किया जावे। शेष शर्तें विभागीय परिपत्र दिनांक 21.09.2004 द्वारा निर्धारित यथावत् रहेंगी ।"

The petitioner has suggested that there is no such concept of government controlled and administered co-operative society under the Co-operative Societies Act and so far the Government is concerned, it has a share in the petitioner society too. It appears that the proposition as stated in the said policy decision being itself vague and uncertain, the Government has been at pains to clarify its meaning and description of the government controlled and administered co-operative societies and it was suggested that societies in which Government had the share and was appointing its Chief Executive Officer were such co-operative societies. The said clarification itself remains obscure and rather gives rise to more questions under the scheme of the Act of 2001. Financial partnership and aid of the Government is a distinct feature as recognised by Section 44 therein and it has been shown on record by the petitioner society that though it is smaller in character but nevertheless has the Government's financial partnership. It is noticed that in its balance-sheet for the year ended on 31.03.2004, capital of the petitioner comprised of members' share at Rs.7,97,345/- and of the Government at Rs.1,85,000/-. It is, therefore, difficult to say that there was no financial partnership of the Government in the petitioner Society. So far the management of a co-operative society is concerned, to be worth its name, final

authority in a co-operative society is always to vest in the general body of its members (vide Section 24 of the Act of 2001).

It may be noticed that under sub-section (1) of Section 29 of the Act of 2001, where Government has subscribed to or has assisted in bringing up the share capital of a co-operative society or otherwise has in it some financial stakes as being a guarantor for loans and advances, it may nominate upto three members on the committee of the co-operative society. But, under sub-section (2) of Section 29, where the Government has subscribed to the share capital of a co-operative society to the extent of Rs.5,00,000/- or more, the Government or any other authority specified in that behalf may nominate another member in addition to those nominated under sub-section(1) and appoint him as Chief Executive Officer of such society who shall be the ex-officio Member-Secretary of the committee. Section 29 of the Act reads thus:

> **"29. Nomination by the Government-** (1) Where the Government has-
>
> (a) subscribed to the share capital of a co-operative society; or
> (b) assisted indirectly in the formation or augmentation of the share capital of a co-operative society as provided in Chapter VII; or
> (c) guaranteed the repayment of the principal and payment of interest of debentures issued by a co-operative society; or
> (d) guaranteed the repayment of principal

amount and payment of interest on loans and advances to a co-operative society,

the Government or any authority specified by the Government in this behalf shall have the right to nominate not more than three members on the committee of a co-operative society:

Provided that such nominees shall only be Government servants.

(2) Notwithstanding anything contained in this Act or the bye-laws of a society, where the Government has subscribed to the share capital of a co-operative society to the extent of five lacs of rupees or more, the Government or any other authority specified in this behalf may nominate another member in addition to those nominated under sub-section (1) and appoint him as Chief Executive Officer of such society, who shall be the ex-officio Member-Secretary of the committee. The Government or such authority as specified may also appoint any other Executive Officer to assist the Chief Executive Officer in such society.

(3) Every person nominated or appointed by the Government shall hold office during the pleasure of the Government or the authority specified by the Government in this behalf.

(4) Where the Government appoints a Chief Executive Officer under this section, the Chief Executive Officer holding office immediately before such appointment shall cease to hold office on such appointment.

(5) The terms and conditions of service of the Chief Executive Officer and the Executive Officer appointed under this section shall be such as may be determined by the Government and the remuneration payable to them shall be paid out of the funds of the co-operative society."

Thus, under the Scheme of the Act of 2001, participation and control of the Government in functioning of the co-

operative society is clearly envisaged; and the submission of the petitioner that there is no concept of Government controlled and administered co-operative society under the Act of 2001 does not appear to be correct. However, the effect of such provision of Section 29 of the Act of 2001 vis-a-vis the rights of parties in the present case shall be considered hereafter.

It appears apposite to refer to another line of submission of the petitioner that the Control Order of 1976 does not provide for any such differentiation of government controlled society and other co-operative society; and that the Government could not have issued any such guidelines as contained in the circular dated 21.09.2004. The submissions do not appear to be correct reading of the scheme of the said Control Order that has been made for the purpose of issuing of authorisation by the Government to the whole seller/fair price shopkeeper to obtain and supply food grains and other essential articles in the area specified in the authorisation. The manner of grant of authorisation and priority or preference thereof are inherent and intrinsic to the scheme of the Order of 1976 and this Court is clearly of opinion that no person can claim an absolute right to be appointed as authorisation holder under the said Order of 1976. The criterion as laid down in the guidelines appear to be of intrinsic necessity for operation of

the Order of 1976 and for dealing in the work of distribution of essential commodities on behalf of the Government. Therefore, the submission made by the petitioner in relation to the Order of 1976 cannot be accepted. It is also noteworthy that no such ground has been distinctly set forth in the pleadings by the petitioner either.

Learned counsel for the petitioner has argued that the impugned actions are mala fide and are calculated only to deprive the petitioner of its right to carry on business of wholesale dealing in the commodities. Learned counsel has referred to various decisions of the Hon'ble Supreme Court on the parameters of judicial review particularly dealing with malice in law. The Hon'ble Supreme Court in Punjab State Electricity Board Ltd. Vs. Zora Singh & Ors. :(2005) 6 SCC 776 has held and pointed out the ratio from the previous decisions thus:

> “40. Furthermore, there cannot be any doubt whatsoever that even if an order is found to be not vitiated by reason of malice on fact but still can be held to be invalid if the same has been passed for unauthorised purposes, as it would amount to malice in law.
>
> 41. In S.R. Venkataraman v. Union of India this Court observed: (SCC P.494, para 5)
>
> > “It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so

as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows as in Shearer v. Shields :

> 'A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.'

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

42. In State of A.P. v. Goverdhanlal Pitti this Court observed: (SCC P.744, paras 12-13)

> "12. The legal meaning of malice is 'ill-will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact'. 'Legal malice' or 'malice in law' means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others'. (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)
>
> 13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on *Administrative Law* (8th Edn., at p.414) based on English decisions and in the context

> of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to 'acquire land' 'for a purpose not authorised by the Act'.”
> (See also Chairman & MD, BPL Ltd. v. S.P. Gururaja and P. Anjaneyulu v. Chief Engineer, A.P. Circle, Bharat Sanchar Nigam Ltd.)

In the case of Tandon Brothers Vs. State of W.B. & Ors. : (2001) 5 SCC 664 the Hon'ble Supreme Court said,-

> “34. ..... Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the state of law – if the action is otherwise or runs counter to the same the action cannot but be ascribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bona fide reason and necessities of the situation in accordance with the law. But if the same runs counter, law courts would not be in a position to countenance the same.”

In the case of Suraj Pal Sahu Vs. State of Maharashtra & Ors.: (1986) 4 SCC 378 the Hon'ble Supreme Court pointed out,-

> “The malice in law is to be inferred when an order is made contrary to the objects and purposes of the Act.”

In the case of Express Newspapers Pvt. Ltd. & Ors. Vs. Union of India & Ors.: (1986) 1 SCC 133 the Hon'ble Supreme Court, while pointing out that there are many cases in which a public authority is held to have acted for improper motives or irrelevant considerations or have failed to take into account the relevant considerations, rendering its action ultra vires and void, has observed:

> "119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab."

In the case of Collector (District Magistrate) Allahabad & Anr. Vs. Raja Ram Jaiswal: (1985) 3 SCC 1 the Hon'ble Supreme Court said,-

> "26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated."

From the decisions relied upon by the learned counsel for the respondent Bhandar, following observations of the Hon'ble Supreme Court in Parbodh Sagar Vs. Punjab State Electricity Board & Ors. : AIR 2000 SC 1684 could be noted,-

> “13..... Incidentally, be it noted that the expression 'mala fide' is not a meaningless jargon and it had its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged depends upon its own facts and circumstances.”

In the case of E.P. Royappa Vs. State of Tamil Nadu & Anr. : AIR 1974 SC 555, the Hon'ble Supreme Court held,-

> “Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

Having regard to the facts and circumstances of the present case, this Court is clearly of opinion that so far interference by the Co-operative Department in the matter of award of dealership is concerned, the grievance raised by the petitioner is neither without basis nor unjustified; and the propositions stated and forwarded by the Registrar and concerned Additional Registrar and Joint Registrar cannot be approved. Such recommendations were without reasonable cause, and as already held by Division Bench of this court in its judgment dated 09.10.2003, were wholly unauthorized, and malafide too. However, beyond the invalid actions of the officers in the Co-operative Department, the submissions of the petitioner questioning policy decision of the Government in its Food and Civil Supplies Department for regulating distribution of commodities, and for appointment of wholesale dealers do not appear to be well founded nor such policy decisions could be struck down as suffering from any vice of malice in fact or malice in law. As noticed hereinbefore, it cannot be said that the policy decision taken by the Government on 21.09.2004 and clarified on 10.12.2004 suffers from any want of authority or has been taken for any oblique purpose or without just and reasonable cause.

It is noteworthy that on the earlier occasion, the petitioner was found entitled and competent to deal with the

work in question and hence the Collector (Supplies) made a recommendation for allowing business of wholesale dealing in levy sugar to be conducted by the petitioner society and as already noticed, the challenge thereto, though made by the respondent Bhandar before this Court, was withdrawn with its special appeal. The attempt on the part of the Department of Co-operative Societies thereafter to shunt out the petitioner from the work in question and to provide a preference to Bhandar, though carried through on their repeated recommendation with the Food and Civil Supplies Department, but met with disapproval of this Court on 09.10.2003. However, as noticed above, this Court precisely held that distribution of such business was the concern of Department of Food and Civil Supplies.

In what manner the wholesale work concerning the essential commodities was and is to be conducted and regulated essentially remains within the jurisdiction in the State Government to decide and for that purpose even if any reasonable classification is brought about, the same cannot be said to be amenable to judicial review so as to consider niceties of the policy decision of the government.

It has of course not been made clear on record as to on what basis the Secretary, Food and Civil Supplies Department issued the order dated 26.07.2004 for withdrawal of the work

from the petitioner; but at that point of time, the DSO concerned sought instructions with reference to the decision of this Court dated 09.10.2003 and did not immediately withdraw the work from the petitioner. However, before anything further was done in the matter, the Government in its Food and Civil Supplies Department proceeded to issue the said general guideline dated 21.09.2004.

The petitioner does not appear correct in its suggestion that such guidelines were also issued so as to provide basis or strength to the letter dated 26.07.2004 and it appears entirely incorrect to link the two i.e., letter dated 26.07.2004 meant for the purpose of petitioner only and the guideline dated 21.09.2004 issued by the Government to all the District Collectors and District Supply Officers that was intended to bring about uniformity in the process of appointment of wholesale dealers and to provide preference to the Co-operative Societies and to appoint individual wholesale dealers only in the case of urgency or necessity. The provision made therein by the Government of extending preference to the co-operative societies controlled and administered by the State Government to the extent that they may be allowed work on departmental rates and the process of calling tenders be taken up only upon their refusal to do the work remain unexceptionable. The said point No.5 in the guideline dated

21.09.2004 being not very specific the Government proceeded to issue the clarification on 10.12.2004. Thus, the guideline dated 21.09.2004 and its clarification dated 10.12.2004 are required to be read being those of general policy decisions and not directed qua or towards the petitioner alone.

However, the question still remains if the respondents have rightly and validly applied such guidelines while issuing orders for removal of the petitioner? The Secretary, Food and Civil Supplies Department addressed a communication to the District Collector, Nagaur on 18.12.2004 for removing the petitioner society from the work as handling agent for Tehsil Dengana immediately and for handing over the work to the respondent Bhandar for the remaining part of the financial year and the impugned order dated 10.01.2005 came to be issued by the Collector (Supplies), Nagaur in compliance of the order dated 18.12.2004. Leaving aside the question raised by the petitioner that order was passed without any opportunity of hearing, this Court finds that the said order dated 18.12.2004 and consequential order dated 10.01.2005 stand squarely contrary to the very guidelines relied upon. The said guidelines dated 21.09.2004 did not envisage removal of a co-operative society like the petitioner from the existing work of wholesale dealing; and at the most it envisaged removal of private individuals that has been specifically stated in term 'निजी थोक

विक्रेता'. It was in the knowledge of the respondents that the petitioner was a co-operative society and it is very difficult to countenance the proposition that the petitioner could also be branded as 'Niji Thok Vikreta'. In the very terms of its circular dated 21.09.2004, the proposition of removing the petitioner could not have been taken up straightway.

Then, the significant aspect of the matter remains that if the proposition of government controlled and administered society is visualised in the context of the provision of sub-section (2) of Section 29 of the Act of 2001, it is to be noticed that the comparative position of the petitioner society and the respondent Bhandar is that the petitioner has alleged that in this society, the financial contribution of the State has been to the tune of Rs.1,85,000/- whereas it is an admitted position that such capital of the Government in the respondent Bhandar has been to the tune of Rs.3,12,000/-. Under Section 29(2) of the Act of 2001, the appointment of Chief Executive Officer is envisaged to be made in relation to such co-operative society where the Government has subscribed to the share capital to the extent of Rs.5,00,000/- or more. Going by the requirements as spelt out in the clarificatory circular dated 10.12.2004, and keeping in view Section 29(2) of the Act of 2001, it is clear that neither the petitioner society nor the respondent Bhandar could be said to be answering to the

description of 'government controlled and administered society' for the purpose of circular dated 21.09.2004. In that scenario, it is very difficult to appreciate as to how and on what basis, the learned Secretary of Food and Civil Supplies Department was insistent that the petitioner society be relieved of the work and at the same time of further proposition that the work be handed over to the respondent Bhandar? This Court is clearly of opinion that the order dated 10.01.2005 has been passed by the respondents in Food and Civil Supplies Department in utter disregard to their own circulars and no plausible reason is available for which in the midst of the financial year the petitioner was required to be removed and the respondent Bhandar was required to be appointed in its place.

It may be pointed out that by way of pleading, a further reason has been attempted to be supplied by the respondent Bhandar as well by State Government that there were certain acts of misfeasance on the part of the petitioner society and so also on the part of its Manager. Suffice is to say in this regard that such had not been the reasons assigned in the letters referred supra for removal of the petitioner from its work and for appointment of the respondent Bhandar. The only consideration had been that the petitioner was not a government controlled and administered society and as noticed above, if the petitioner were not so, it is difficult to

accept that the respondent Bhandar would answer to such description.

It has been suggested during the course of submissions in the present case that the entire function of the respondent Bhandar is under the control of the Government and it being a large co-operative having the area of operation in the entire District has rightly been appointed for wholesale work for the entire District. It is again required to be noticed in that regard that it has not been the reason for removal of the petitioner from its work that the work was required to be executed by the respondent Bhandar because it had area of operation over the District in preference to the petitioner who had area of operation confined to Tehsil Degana alone. Viewed from any angle, the order dated 10.01.2005 cannot be sustained and is required to be annulled. It is a different matter that this Court has already stayed operation of the said order while admitting the writ petition on 01.02.2005 and has restored the position ante and thereafter the said terms of authorisation has already come to an end and the order has lost its relevance. However, for the record, writ petition No.428/2005 is required to be allowed while setting aside the orders dated 10.01.2005 and dated 18.12.2004.

Even when the said order dated 10.01.2005 is set aside and for that matter writ petition No.428/2005 stands allowed,

the question still remains about the relief claimed by the petitioner in writ petition No.1802/2005 that was filed on 28.03.2005 with reference to the communication dated 13.02.2005 sent by the Additional Registrar, Co-operative Societies, Jaipur and dated 22.02.2005 sent by the Joint Registrar, Co-operative Societies, Ajmer. The petitioner has also challenged the aforesaid circulars dated 21.09.2004 and 10.12.2004 in this writ petition.

The said circulars dated 21.09.2004 and 10.12.2004 have already been held hereinbefore to have validly been issued by the Government under its authority to regulate dealings in essential commodities. The letters dated 13.02.2005 and 22.02.2005 made the basis of writ petition No.1802/2005 have been issued again by the officers of the Co-operative Department. Firstly, the Registrar, Co-operative Societies, Jaipur would address a letter to the District Collector, Nagaur referring to the circular dated 21.09.2004 issued by the Food and Civil Supplies Department and then suggesting that the Joint Registrar had earlier shown the petitioner society to eligible for being appointed as wholesale dealer and that such letter was not in accord with the circular issued by the Food and Civil Supplies Department and that only the District Wholesale Bhandar answers to the requisite description. The Joint Registrar who had earlier issued a letter

on 08.10.2004 at the instance of the petitioner now proceeded to state to the Collector, Nagaur that the District Sahakari Upbhokta Wholesale Bandars were having primary objectives of wholesale dealing whereas Gram Sewa Sahakari Samitis were essentially to deal with agricultural loan and as retailer; and then suggesting that the respondent Bhandar be appointed as wholesale dealer for Tehsil Degana also.

It is painful to notice that despite this Court having pronounced heavily against the officers of the Co-operative Societies Department for unauthorisedly interfering in the matters relating to appointment of dealers for the purpose of distribution of essential commodities that is essentially a matter for concern of Food and Civil Supplies Department only, the Registrar and Joint Registrar with impunity have proceeded to issue these absolutely uncalled for and unwarranted letters beyond their jurisdiction and authority. However, such letters may not be of any worth and the Food and Civil Supplies Department was not obliged to act on such suggestions and letters but for that matter, it cannot be accepted that such letters provided the petitioner with a genuine cause to maintain the subsequent writ petition (No.1802/2005) before this Court.

The suggestions on the part of the Registrar and Joint Registrar and other officers of the Co-operative Department

were not decisive of the matter nor the Government had taken a final decision for appointment of respondent Bhandar as wholesale dealer for the next financial year and it appears that taking shelter on such unwarranted letters by the officers of the Co-operative Department, the petitioner was quick to approach this Court with the suggestion that it was not likely to be appointed as wholesale dealer for the next year. The petitioner took care not to implead the respondent Bhandar as respondent in this writ petition as originally filed, though it was known to the petitioner that the letters sought to be impugned in the said writ petition were essentially of recommendation of appointment of the respondent Bhandar as wholesale dealer. In the normal course of events and for genuineness of its cause, the petitioner would not have avoided impleading the respondent Bhandar as party in writ petition No.1802/2005 in the first place. It is noticed that this Court passed the interim order on 29.03.2005 directing that the respondents would not grant licence in question to anybody else except to the petitioner for Degana Tehsil but the respondent Bhandar was impleaded as party respondent No.7 in this case only by the order dated 10.08.2005.

For the reasons already stated above, this Court is clearly of opinion that ultimately the appointment of wholesale dealer for a particular area and for particular commodity is a

matter to be decided by the State Government and the submission of the petitioner that it has got an indefeasible right to continue as wholesale dealer for the area in question cannot be countenanced. The petitioner has prayed for the following reliefs in this writ petition No. 1802/2005:-

> "(i) By an appropriate writ, order or direction, impugned orders, circulars/ communications dated 21.09.04 (Ann-13), 10.12.04 (Ann-21), 13.02.05 (Ann-22) & 22.02.2005 (Ann-23) respectively may kindly be quashed and set aside.
>
> (ii) By an appropriate writ, direction or order the respondent No.3 may kindly be restrained from acting upon these circulars/orders/communications and may be directed not to deprive the petitioner Society from the wholesale dealership of wheat and sugar for the entire Degana Tehsil on the basis of said circulars/orders & communications for the financial year 2005-06 and to continue the wholesale dealership of the petitioner society in the entire Tehsil of Degana for financial year 2005-06."

The relief as claimed by the petitioner to quash the guidelines dated 21.09.2004 and 10.12.2004 deserves to be refused for the reasons stated hereinbefore. The letters dated 13.02.2005 and dated 22.02.2005 are entirely unnecessary and of no avail nor decisive of the matter; and there appears no necessity for pronouncement upon the same any further because, as already pointed out, it was none of the business of the Registrar, Co-operative Department or any Officers of the Co-operative Department to suggest to Food and Civil Supplies Department as to who should be appointed

as wholesale dealer for which area; and such letters are not decisive of the final decision to be taken by the Food and Civil Supplies Department. The other relief claimed by the petitioner to continue it as a dealer for Degana Tehsil for the next financial year and so on cannot be countenanced because ultimately the matter is required to be decided by the Food and Civil Supplies Department as to who answers to its description of the concerned society to be appointed as wholesale dealer and whether to appoint the petitioner or respondent Bhandar or anybody else as wholesale dealer in accordance with its policy. Therefore, this Court is of opinion that the petitioner is not entitled for any relief in writ petition No.1802/2005.

It may be pointed out that learned counsel for the respondent has made elaborate submission in relation to the interim order passed in favour of the petitioner in this case that the petitioner has been able to obtain such interim order without disclosing correct facts and without having any existing right; and learned counsel has prayed for the relief of awarding the respondent Bhandar costs and damages for being deprived of its right to carry on business. However, as noticed above, this Court is of opinion that in view of the respective position of the parties, it cannot be pronounced directly that the respondent Bhandar alone was entitled to carry on business that was sought to be obstructed by the

petitioner without any rhyme or reason. It is a different matter that this Court has not countenanced the approach of the petitioner in filing the writ petition without joining the respondent Bhandar in the first place and filing the petition merely on the basis of letters of Officers of the Co-operative Department but for that matter it does not appear a fit case where any costs or damages are to be allowed to the respondent Bhandar.

As a result of the aforesaid, writ petition No.428/2005 is allowed and the impugned communications/orders dated 18.12.2004 and 10.01.2005 are quashed and set aside. However, writ petition No.1802/2005 is dismissed subject to the clarification that the impugned communications dated 13.02.2005 and dated 22.02.2005 are entirely redundant and not decisive of the rights of the parties.

The matter of appointment of concerned wholesale dealer is left to be decided by the State Government in its Food and Civil Supplies Department strictly in accordance with law. Parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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